

CLETA RAE LAMPE
Claimant

COLDWATER LAUNDRY
Respondent

FARM BUREAU INSURANCE
Insurance Carrier

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ORDER

APPEARANCES

RECORD AND STIPULATIONS

ISSUES

The Assistant Director found that claimant made a good faith effort to find appropriate employment after she recovered from her injuries and, when those efforts failed, she began vocational training. The Assistant Director found claimant had a 55.5 percent permanent partial general disability. The respondent and its insurance carrier appealed that decision and contend that claimant's benefits should be limited to the functional impairment rating because she temporarily removed herself from the open labor

market when she began the vocational training. The only issue before the Appeals Board on this appeal is the nature and extent of claimant's injury and disability.

FINDINGS OF FACT

After considering the entire record, the Appeals Board finds as follows:

(1) The parties stipulated that Cleta Rae Lampe, the claimant, sustained personal injury by accident arising out of and in the course of employment with the respondent, Coldwater Laundry, during the period from January 1, 1995, through July 20, 1995. During that period, Ms. Lampe developed bilateral carpal tunnel syndrome, which resulted in surgery and a 12 percent whole body functional impairment.

(2) The parties also stipulated that Ms. Lampe's average weekly wage for this accident was \$222.71.

(3) As a result of her injury, Ms. Lampe is now restricted from performing resisted gripping or crimping, repetitive or prolonged wrist flexion/extension, and using vibratory tools. Also, she should avoid direct wrist pressure and avoid work in environments colder than 50 degrees unless she has adequate clothing. Those restrictions were provided by Philip R. Mills, M.D., who is board certified in physical medicine and rehabilitation and is also certified as an independent medical examiner.

(4) After determining she could not return to her job as a laundress, Ms. Lampe began looking for other employment in the Coldwater, Kansas, area where she lives. Being unable to do the more physical labor she once performed and being unable to find work within her medical restrictions, Ms. Lampe began a vocational training course to supplement her high school education and make her more employable.

(5) Coldwater Laundry is unable to accommodate Ms. Lampe's work restrictions. There is no evidence that the respondent's insurance carrier has offered any vocational rehabilitation services, including either training or job placement assistance, as allowed by the Workers Compensation Act.

(6) In August 1996, Ms. Lampe entered a vocational technical school where she enrolled in a business and technology program that would train her to work as a receptionist, executive assistant, secretary, and other clerical positions. When she last testified in December 1996, Ms. Lampe believed she would complete her training in August 1997. As part of her vocational training, Ms. Lampe worked at the school 15 hours per week earning \$4.75 per hour or \$71.25 per week.

(7) Comparing Ms. Lampe's actual pre- and post-injury average weekly wages yields a difference of 68 percent.

(8) As a result of her work-related injuries, Ms. Lampe has lost the ability to perform 43 percent of her former work tasks. That finding is based upon the opinion of Dr. Mills who identified 6 of 14 former job tasks that Ms. Lampe should not do as a result of her work-related injuries, plus another 3 tasks that he was uncertain of.

(9) The Appeals Board adopts the Assistant Director's findings.

CONCLUSIONS OF LAW

The Award should be affirmed.

(1) Because hers is an "unscheduled" injury, Ms. Lampe's entitlement to permanent partial general disability benefits is governed by K.S.A. 44-510e:

The extent of permanent partial general disability shall be the extent, expressed as a percentage, to which the employee, in the opinion of the physician, has lost the ability to perform the work tasks that the employee performed in any substantial gainful employment during the fifteen-year period preceding the accident, averaged together with the difference between the average weekly wage the worker was earning at the time of the injury and the average weekly wage the worker is earning after the injury. In any event, the extent of permanent partial general disability shall not be less than the percentage of functional impairment. . . . An employee shall not be entitled to receive permanent partial general disability compensation in excess of the percentage of functional impairment as long as the employee is engaging in any work for wages equal to 90% or more of the average gross weekly wage that the employee was earning at the time of the injury.

The above statute, however, must be read in light of Foulk v. Colonial Terrace, 20 Kan. App. 2d 277, 887 P.2d 140 (1994), *rev. denied* 257 Kan. 1091 (1995), and Copeland v. Johnson Group, Inc., 24 Kan. App. 2d 306, 944 P.2d 179 (1997). In Foulk, the Court held that a worker could not avoid the presumption of no work disability contained in K.S.A. 1988 Supp. 44-510e by refusing to attempt to perform an accommodated job that the employer offered that paid a comparable wage. In Copeland, the Court held, for purposes of the wage loss prong of K.S.A. 44-510e, a worker's post-injury wage would be based upon ability rather than actual wages when the worker failed to put forth a good faith effort to find appropriate employment after recovering from the injury.

(2) The Assistant Director found that Ms. Lampe made a good faith effort to find appropriate employment and that she had not refused to work. Therefore, neither Foulk nor Copeland was appropriate to limit Ms. Lampe's benefits to her functional impairment rating. The Appeals Board agrees. Ms. Lampe's medical restrictions severely restrict the number of jobs that she can perform. Also, the rural area where Ms. Lampe lives does not offer the wide variety of jobs that exist in more metropolitan areas. Further, there is no

evidence that Ms. Lampe did not apply for any appropriate jobs that would have paid a comparable wage. Under K.S.A. 44-510g, the insurance carrier had the opportunity to provide vocational rehabilitation and job placement assistance to Ms. Lampe to assist her in obtaining employment but chose not to. When considering all the circumstances, Ms. Lampe's decision to attend school to increase her vocational skills and increase her chances to find appropriate employment was reasonable and satisfies the good faith requirement set forth in Copeland.

(3) Averaging the 68 percent wage difference and the 43 percent task loss yields a 55.5 percent permanent partial general disability, which the Assistant Director found.

(4) The Appeals Board adopts the conclusions set forth in the Award to the extent they are not inconsistent with the above.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award dated November 7, 1997, entered by Assistant Director David A. Shufelt should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of June 1998.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Henry A. Goertz, Dodge City, KS
D. Shane Bangerter, Dodge City, KS
David A. Shufelt, Assistant Director
Philip S. Harness, Director